

James M. Dore - State Bar No. 343860
JUSTICIA LABORAL, LLC.
6232 N. Pulaski Rd. Suite 300, Chicago, IL 60646
P: (773) 415-4898; E: jdore@justicialaboral.com
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OSCAR RENE ORELLANA IZAGUIRRE

Plaintiff,

vs.

PROSPER BUILDERS, INC.,
QUOC K. TRUONG AND THAI TRUONG,

Defendants.

CASE NO: 5:23-CV-316

MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 55

MAGISTRATE JUDGE
SUSAN VAN KEULEN

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 55**

Plaintiff Oscar Rene Orellana Izaguirre ("Plaintiff"), by attorney James Dore of Justicia Laboral LLC, submit this Motion for Default Judgment Pursuant to Federal Rule of Civil Procedure 55, and states:

1. This is a cause of action whereby Plaintiff seeks to secure declaratory relief and damages to remedy Defendants' violations of federal, state and local employment laws by failing to adequately compensate Plaintiff for the hours he worked, and to secure declaratory, compensatory, and punitive damages under federal and state employment laws. Dckt. 1.

Service and Personal Jurisdiction

2. Defendant PROSPER BUILDERS, INC. is a corporation conducting business in San Jose, California, and whose principal office is 1536 Bahama Way, San Jose, California 95122 as per the

State of California Secretary of State's records. Accordingly, venue is proper in the Northern District of California.

3. On April 19, 2023, Defendant PROSPER BUILDERS, INC. was served through the California Secretary of State, at c/o California Secretary of State 1500 11th Street, 39 Sacramento, CA 95814. Dckt. 22. This is after the Court granted Plaintiff's motion for alternative service on entity defendant on April 13, 2023. Dckt. 18.

4. After several unsuccessful diligent attempts to personally serve individual Defendants THAI TRUONG and QUOC K. TRUONG at 1536 Bahama Way, San Jose, California 95122, pursuant to Fed. R. Civ. P. 4(e)(2)(B), Defendants THAI TRUONG and QUOC K. TRUONG were served via substitute service by handing copies of the Complaint and summons to THUY TROUNG, who identified herself as Defendants' sister, at 8206 Split Rail Way, Sacramento, CA 95829 on March 22, 2023. Dckts. 16 and 17.

5. Substitute service of individual Defendants THAI TRUONG and QUOC K. TRUONG was proper pursuant to Fed. R. Civ. P. 4(e)(2)(B). As a result, the Court need not look to California law for service of process. Rule 4(e)(2)(B) does not contain a reasonable diligence requirement.

6. Thus, the Court has personal jurisdiction over all Defendants in the instant case. *See Trustlabs, Inc. v. An*, No. 21-cv-2606-CRB, 2021 WL 312595, at *2 n.2 (July 23, 2021).

Venue

7. "28 U.S. Code § 1391 - Venue generally" provides in relevant part:

(b)(2) Venue in General.—A civil action may be brought in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(c)(2) Residency.—For all venue purposes, an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal

jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business;

(d) Residency of Corporations in States With Multiple Districts. —

For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

8. Defendant PROSPER BUILDERS, INC. is a corporation conducting business in San Jose, California, and whose principal office is 1536 Bahama Way, San Jose, California 95122. San Jose California is located within the Northern District of California. Its principal place of business, as reflected in the California Secretary of State's records, is located within the Northern District of California. Further, Defendants THAI TRUONG and QUOC K. TRUONG are sued as the operators/owners of PROSPER BUILDERS, INC., a company they were operating within the Northern District of California. The Plaintiff was hired and performed work for all Defendants within the Northern District of California; a substantial part of the events giving rise to the claims herein occurred within the Northern District of California.

9. As such, venue in the Northern District of California is proper.

Argument

10. On June 19, 2023, Plaintiff filed a Motion for Entry of Default, which was granted by the Court on June 21, 2023. Dckts. 23 and 24.

11. Accordingly, Plaintiff now moves for a default judgment against Defendants pursuant to Federal Rule of Civil Procedure 55; in support, Plaintiff tenders supporting documents.

12. Plaintiff Oscar Rene Orellana Izaguirre is asking that a default judgment be entered in his favor in the amount of \$42,136.50 representing unpaid overtime wages, liquidated damages, waiting time penalties, meal and breaks violations and wage statement violations, plus

84 reasonable attorney's fees and costs. See Oscar Rene Orellana Izaguirre's Affidavit of Prove- Up,
85 attached as Exhibit A.

86 13. Additionally, Plaintiff requests an award of reasonable attorney's fees and costs of suit in
87 the amount of \$4,669.05 pursuant to 29 USC § 216(b) of the Fair Labor Standards Act and under
88 the California Labor code. In support thereof, attached hereto as Exhibit B is the Petition for
89 Attorney's Fees and Costs.

90 14. Additionally, in support of this Motion, Plaintiff attaches: (i) a Certificate of Default,
91 attesting to the fact that Defendant has not entered an appearance in this case (See Exhibit 3); and
92 (ii) An Affidavit as to Military Service establishing that the individual Defendant(s) is/are not on
93 current active duty with the US Armed Forces (See Exhibit 4).

94 15. In determining whether to grant a default judgment, a court may consider the following
95 factors: (1) the possibility of prejudice to plaintiff if relief is denied, (2) the substantive merits of
96 plaintiff's claim, (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the
97 possibility of dispute as to any material facts in the case, (6) whether default resulted from
98 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure
99 favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir. 1986). In
100 considering these factors, all factual allegations in the plaintiff's complaint are taken as true,
101 except those relating to damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th
102 Cir.)

103 16. All the Eitel factors favor entry of default judgment in the present case. The first (1) factor
104 is met since Plaintiff will be prejudiced if relief is denied because Defendants have failed to
105 participate in this action even though they presumably have knowledge of the existence of the
106 lawsuit. Therefore, Plaintiff's only recourse is a default judgment against them. Factors (2) and
107 (3) are also met, inasmuch as Plaintiff's claims have merit and are sufficiently pled. The fourth (4)

factor is also met, as set forth in the accompanying declarations, \$46,805.55 is at stake, and while not insignificant, it is small and certain enough to make this matter appropriate for resolution by default judgment. The fifth (5) factor is met as well, since the Clerk of the Court entered defaults against all Defendants on June 21, 2023, there can be no possibility of dispute as to any material facts in the case (*see Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002) (once the Clerk of Court enters default, all well-pleaded allegations regarding liability are taken as true except as to the amount of damages). Factor six (6) is also met since there is no evidence the default resulted from excusable neglect. Finally, factor seven (7), Defendants' failure to participate in this action has made it impossible for a decision on the merits to be rendered by the Court.

WHEREFORE, Plaintiff Oscar Rene Orellana Izaguirre respectfully requests that this Motion be granted, and that the Court enters judgment in his favor and against Defendants PROSPER BUILDERS, INC., QUOC K. TRUONG AND THAI TRUONG, jointly and severally, in the amount of **\$46,805.55**, and that the Court enter any other relief deemed just or necessary.

/s/James M. Dore

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Attorneys for Plaintiffs
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OSCAR RENE ORELLANA IZAGUIRRE

Plaintiff,

vs.

PROSPER BUILDERS, INC.,
QUOC K. TRUONG AND THAI TRUONG,

Defendants.

CASE NO: 5:23-CV-316

NOTICE OF FILING AND CERTIFICATE OF
SERVICE OF MOTION FOR DEFAULT
JUDGMENT PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 55

Notice of Filing

TO: PROSPER BUILDERS, INC.
Defendant
8206 Split Rail Way
Sacramento, California 95829

QUOC K. TRUONG
Defendant
8206 Split Rail way
Sacramento, California 95829

THAI TRUONG
Defendant
8206 Split Rail Way
Sacramento, California 95829

PLEASE TAKE NOTICE that on September 29, 2023, I caused to be filed the attached the
**Plaintiff's Motion for Default Judgment against Defendants pursuant to Federal Rule of Civil
Procedure 55**, copies of which are hereby served upon you.

s/ James M. Dore

Justicia Laboral LLC
James M. Dore (State Bar No. 343860)
Attorneys for Plaintiffs
6232 N. Pulaski Road, Suite 300
Chicago, IL. 60646
P: 773-415-4898
E:jdore@justicialaboral.com;

Certificate of Service

I, James M. Dore, an attorney, certify that I caused this **Notice of Filing and Plaintiff's Motion for Default Judgment against Defendants pursuant to Federal Rule of Civil Procedure 55** to be filed with the Clerk of the Court on September 29, 2023 and I certify that I served this notice and documents by mailing copies to the attorneys/parties of record at their listed addresses below, and depositing the same in the U.S. Mail in Chicago on September 29, 2023, with proper postage prepaid:

PROSPER BUILDERS, INC.
Defendant
8206 Split Rail Way
Sacramento, California 95829

QUOC K. TRUONG
Defendant
8206 Split Rail way
Sacramento, California 95829

THAI TRUONG
Defendant
8206 Split Rail Way
Sacramento, California 95829

s/ James M. Dore

Justicia Laboral LLC
James M. Dore (State Bar No. 343860)
Attorneys for Plaintiffs
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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OSCAR RENE ORELLANA IZAGUIRRE

CASE NO: 5:23-CV-316

Plaintiff,

vs.

MOTION FOR DEFAULT JUDGMENT
 PURSUANT TO FEDERAL RULE OF CIVIL
 PROCEDURE 55

PROSPER BUILDERS, INC.,
 QUOC K. TRUONG AND THAI TRUONG,

Defendants.

Affidavit for Prove-Up by Plaintiff Oscar Rene Orellana Izaguirre

Oscar Rene Orellana Izaguirre, having been first duly sworn on oath, states:

1. I am adult, over the age of twenty-one, and I have personal knowledge of the facts set forth in this affidavit, and I am a Plaintiff in the above captioned action.
2. My primary language is Spanish. I have read and reviewed this affidavit with the assistance of an interpreter, Derian Geovanni Palacios Morales, who is an employee of my lawyer's law firm, Justicia Laboral, LLC. I am a resident of California; I was formerly employed by Defendants Proper Builders, Inc., Quoc K. Truong and Thai Truong ("Defendants") in California.
3. I began working for Defendants on or before July 2022 until September 15, 2022. My hours per week were on average 70 hours per week. My rate of pay was \$17.14 per hour. My position was as a general laborer and driver.
4. Defendants Quoc K. Truong and Thai Truong were my supervisors during my employment.
5. I was never paid time-and-a-half wages for any hours worked in excess of forty hours per week. I was not paid the minimum wage for all my hours worked.

- 29 6. Attached hereto as Exhibit A is a spreadsheet showing my unpaid minimum and overtime
30 wages on a week-by-week basis, as well as the damages I am seeking. The total unpaid
31 overtime and minimum wages owed to me are \$14,243.34. Ex. A is incorporated herein.
- 32 7. Under the Fair Labor Standards Act, I am owed liquidated damages of \$14,243.34 for my
33 unpaid overtime and minimum wages.
- 34 8. Attached hereto as Exhibit B, is a spreadsheet showing that I am also owed \$3,993.62 in
35 unpaid rest and meal breaks under the California Labor Code. Exhibit B is incorporated
36 herein.
- 37 9. Attached hereto as Exhibit C, is a spreadsheet showing that I am also owed \$5,656.20 in
38 waiting time penalties under the California Labor Code. Exhibit C is incorporated herein.
- 39 10. Under the California Labor Code, I am also owed \$4,000.00 for wage statements violations.
- 40 11. I would ask that the Court enter judgment in the amount of \$42,136.50, plus reasonable
41 attorney's fees, plus costs of suit, itemized as follows:
- 42 a) \$14,243.34 in overtime and minimum wages under the Fair Labor
43 Standards Act;
- 44 b) \$14,243.34 in liquidated damages;
- 45 c) \$3,993.62 in rest and meal violations;
- 46 d) \$5,656.20 in waiting time penalties;
- 47 e) \$4,000.00 for wage statement violations under the California Labor
48 Code; and
- 49 f) TBD – reasonable attorney's fees and costs.
- 50

51 **Verification**

52

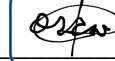
53 I declare under penalty of perjury that the foregoing is true and correct.

54

55 Executed: 7/24/2023

56

DocuSigned by:



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Oscar rene Orellana Izaguirre

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Interpreter Verification

62 I declare under penalty of perjury that I am fluent in both English and Spanish, and that on July
63 24, 2023, I read and interpreted this Affidavit from English to Spanish for Affiant.

64

65 Executed: 7/25/23

66



Derian Geovanni Palacios Morales

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EXHIBIT A-OT and unpaid wages calculator

<u>Week</u>	<u>Av. Hours/Wk.</u>	<u>Hours Over 40</u>	<u>Hrly. Wage</u>	<u>MW/Hr.</u>	<u>Unpaid MW</u>	<u>Unpaid OT</u>	<u>FLSA Liquidated</u>
7/17/2022	4	0	\$17.14	\$0.00	\$0.00	\$0.00	\$0.00
7/24/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
7/31/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
8/7/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
8/14/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
8/21/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
8/28/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
9/4/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
9/11/2022	70	30	\$17.14	\$0.00	\$0.00	\$257.10	\$257.10
9/18/2022	27	0	\$17.14	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS:	591	240				\$2,056.80	\$2,056.80

<u>Unpaid Hours</u>	<u>Unpaid OT Hours</u>	<u>Hrly. Wage</u>	<u>Unpaid Wages</u>
351	240	\$17.14	\$12,186.54

EXHIBIT B-Rest and Lunch Breaks Violations

Hours/Day	Owed Breaks	Hrly. Wage	Unpaid Breaks/Day	Unpaid Breaks Total
10	4	\$17.14	\$68.56	3,993.62

EXHIBIT C -Waiting time penalties

Hours/Day Reg.	OT hours	Total wages per day	<u>Waiting time penalties</u>
8 @ \$17.14=\$137.12	2@\$25.71=\$51.42	\$188.54	30 days @\$188.54=\$5,656.20

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
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OSCAR RENE ORELLANA IZAGUIRRE

Plaintiff,

vs.

PROSPER BUILDERS, INC.,
QUOC K. TRUONG AND THAI TRUONG,

Defendants.

CASE NO: 5:23-CV-316

MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 55

PETITION FOR ATTORNEY'S FEES, TIME AND TASKS

James M. Dore, having been first duly sworn on oath, states:

1. Plaintiff Oscar Rene Orellana Izaguirre retained me to represent them in the above captioned lawsuit against the named Defendant(s). The above captioned lawsuit involves claims under the Fair Labor Standards Act and California Labor Code to collect unpaid wages and overtime from Defendant(s), their former employer.

2. I am the primary attorney responsible for handling this matter; and I am licensed to practice law in the state of California. My bar number is 343860. The administrative work on the file is performed by our employee, Derian Geovanni Palacios Morales, also referred to as "Gio" in our time keeping records. We do not bill any hourly time for work performed by Gio.

3. Our billable hourly rate is \$400.00 per hour for matters of this kind.

4. Our \$400.00 hourly rate is reasonable and comparable to rates charged by attorneys and staff of a comparative level, serving the same legal market of the Northern District of California. I have been practicing law for over fourteen years.

5. The following list specifies an accurate statement of the subjects and the professional time spent and to be spent in the prosecution of the claim(s) of Plaintiff against the Defendants. The list represents the coincidental or reasonably current preparation of the subject matters and the time assigned as reflected in the records of the attorneys for Plaintiff:

Date	Atty	Hours	Description of Activity
01/23/2023	JMD	0.30	RESEARCH RE: DEFENDANT; ONLINE PRESENCE AND LOCATION
01/23/2023	JMD	2.00	DRAFT COMPLAINT; DRAFT CIVIL ACTION COVER SHEET; DRAFT APPEARANCE; DRAFT SUMMONSES TO DEFENDANTS;
01/24/2023	JMD	0.10	REVIEW MINUTE ORDER;
02/28/2023	JMD	0.15	REVIEW AFFIDAVITS OF NON-SERVICE OF SUMMONS FOR ALL DEFENDANTS;
03/14/2023	JMD	0.10	REVIEW MINUTE ORDER;
04/04/2023	JMD	0.30	DRAFT AND FILE MOTION TO SERVE PROPER BUILDERS, INC. THROUGH THE CALIFORNIA SECRETARY OF STATE;
04/05/2023	JMD	0.30	DRAFT AND FILE MOTION AND AMENDED MOTION FOR EXTENSION OF TIME TO SERVE DEFENDANTS;
04/10/2023	JMD	0.10	REVIEW AND FILE AFFIDAVITS OF SERVICE OF PROCESS AND AFFIDAVIT OF NON-SERVICE AS TO PROPER BUILDERS, INC.;
04/13/2023	JMD	0.10	REVIEW ORDER GRANTING SERVICE THROUGH SECRETARY OF STATE;
04/18/2023	JMD	0.10	DRAFT AND FILE REQUEST FRO ISSUANCE OF SUMMONS PROPER BUILDERS, INC.;
05/10/2023	JMD	0.10	REVIEW AND FILE SERVICE OF PROCESS AFFIDAVT AS TO PROSPER BUILDERS, INC.;
06/19/2023	JMD	0.30	DRAFT AND FILE REQUEST FOR ENTRY OF DEFAULT;
06/21/2023	JMD	0.10	REVIEW ORDER GRANTING CLERK'S ENTRY OF DEFAULT;

07/07/2023 JMD 4.00 DRAFT AFFIDAVIT FOR PROVE-UP, INCLUDING
SPREADSHEET DETAILING DAMAGES IN THE CASE; DRAFT
PETITION FOR ATTORNEYS FEES AND COSTS; DRAFT
CERTIFICATE OF DEFAULT; DRAFT AFFIDAVIT AS TO
MILITARY SERVICE; DRAFT NOTICE AND MOTION FOR
DEFAULT JUDGMENT;

Total Hours: JMD 8.05 hrs. X \$400.00/hr = \$3,228.05

Total Attorneys Fees = \$3,228.05

Costs	Date	Amount	Description
	01/23/2023	\$402.00	Filing Complaint
	05/04/2023	\$1,069.00	Costs of Service – Summonses and Complaints

Total Costs: \$1,471.00

6. These records identify the work that we did each day, the amount of time that we devoted to this matter on that day (including separate entries for each task), and a description of the work performed. The time entries on these invoices were entered by me personally, at or near the time of performing the work in the ordinary course of our daily practice. These billing records are kept in the ordinary course of our regularly conducted business activities. Some entries may have been redacted in part for the purpose of protecting attorney-client communications or work product privilege.

7. The tasks performed and the costs incurred were all reasonably and necessarily incurred in the case. The fees and costs incurred reflect tasks that were performed competently and efficiently.

8. Accordingly, the total amount of attorney's fees and costs being sought are **\$4,699.05**.

9. I have personal knowledge of the facts set forth in this Affidavit and can testify in accordance therewith.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 29, 2023

/s/James M. Dore

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vs.

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Defendants.

CASE NO: 5:23-CV-316

MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 55

AFFIDAVIT AND CERTIFICATE IN SUPPORT OF MOTION FOR DEFAULT

I, **James M. Dore**, attorney for Plaintiffs in the above captioned matter, do hereby certify that on September 29, 2023, I reviewed our file and/or the online docket for this case. I further certify that the Defendants in this case have not entered an appearance in the lawsuit as of today's date.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 29, 2023

/s/ James M. Dore

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James M. Dore (State Bar No. 343860)
Attorneys for Plaintiffs
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vs.

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Defendants.

CASE NO: 5:23-CV-316

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AFFIDAVIT AS TO MILITARY SERVICE

I, **James M. Dore**, counsel for plaintiff, on oath state that with respect to Defendant Quoc K. Truong and Thai Truong ("Defendants"), said defendant(s) is/are not in the military service of the United States. This affidavit is based on these facts. Defendants are operating a construction and landscaping business in the geographic boundaries of the Northern District of California and has been since at least July 2022. Defendants were served March 22, 2023. They did not advise the Plaintiff's process server of any military service.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 29, 2023

/s/ James M. Dore

James M. Dore (**State Bar No. 343860**)
Attorney For Plaintiff
Justicia Laboral, LLC

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